Supreme Court, U.S.
FILED
FEB 22 1991
OFFICE OF THE CLERK

(3)

No. 90-1133

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1990

WYATT MINING EQUIPMENT, INC., ET AL

Petitioners,

v.

ROBIN S. THOMAS, ET AL

Respondents.

REPLY BRIEF OF PETITIONER EDWARD R. WYATT

Edward R. Wyatt
P.O. Box 1062
Marion, Virginia 24354
Phone/Fax: 703/783-2247
Pro Se

LIST OF PARTIES AND RULE 29.1 LIST

The parties in the proceeding below were Edward R. Wyatt, Wyatt Mining Equipment, Inc., Robin S. Thomas, and Michael Anthony Proffit.

The petitioner in this case is Edward R. Wyatt, pro se, as a party, and Edward R. Wyatt, pro se, as a party in interest of Wyatt Mining Equipment, Inc.

The respondents, as parties, are Robin S. Thomas and Michael Anthony Proffit.

The respondent, as a party in interest, is Allstate Insurance Company.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Fourteenth Amend. 1-11

28 U.S.C.ss2403.....1-11

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October Term, 1990

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Petitioners,

v.

ROBIN S. THOMAS, ET AL

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REPLY BRIEF OF PETITIONER EDWARD R. WYATT

OPINIONS BELOW

The Opinion of the Supreme Court of Virginia. (Petition, Appendix B).

The Opinions of the Circuit Court of Smyth County, Virginia. (Petition, Appendix C, D, E, F).

REPLY TO BRIEF IN OPPOSITION OF RESPONDENT ROBIN S. THOMAS

The Statement Of The Case, and the Reasons For Denying The Writ, in the Brief In Opposition of respondent Robin S. Thomas, by counsel, are repetitious, confusing, irrelavent and, as was done in the Courts below, is no more that an attempt to "further" confuse the issues and disrupt this Court.

Pursuant to Rule 15.6 of the Rules of the United States Supreme Court, the petitioner will attempt to reply to the Brief In Opposition of respondent , Robin S. Thomas with a summary of the issues first raised in respondent's brief, which are in conflict, in the manner following and rely on Constitutional and Statutory Provisions cited in the Petition For A Writ Of Certiorari:

The petitioner, Edward R. Wyatt pro se, didn't appeal the ruling of the Court in the Circuit Court of Smyth County, Virginia, of May 2, 1989, entered on May 22, 1989, because he was not allowed to sit in on the hearing, in the judges chambers, and was not advised that he had been dismissed as a plaintiff. Furthermore, the Court's granting of Edward R. Wyatt's Motion For Leave To Amend Motion For Judgment to add Wyatt Mining Equipment, Inc., and Motion To Add Party Plaintiff, and the Order entered on May 22, 1989, styled Edward R. Wyatt, et al, plaintiff, v Robin S. Thomas, et al, defendants allowed him to remain as a party plaintiff. (Petition, Appendix F, G pp. 27a, 31a) (Reply, Appendix H, I, pp. 23a, 25a).

No hearing was ever held, and no Order was ever entered dismissing Edward

R. Wyatt as a party plaintiff, yet, the case went to trial on September 20, 1989 and an Order was entered on October 10, 1989, styled Wyatt Mining Equipment, Inc. vs. Robin S. Thomas and Michael Anthony Proffit, and the Final Order entered January 16, 1989, styled Wyatt Mining Equipment, Inc. vs. Robin S. Thomas, et al, is devoid of Edward R. Wyatt as a party plaintiff. (Petition, Appendix C, E, pp. 4a, 12a, 23a).

Edward R. Wyatt, pro se, is the petitioner as a party and as a party in interest, as the "sole" owner, president, registered agent, secretary, and treasurer of Wyatt Mining Equipment, Inc., in this case which went to the Supreme Court of Virginia styled Wyatt Mining Equipment, Inc. v. Robin S. Thomas, et al, even though the case went to trial in the Circuit Court of Smyth County, Virginia,

and an order was entered, styled Wyatt Mining Equipment, Inc. v. Robin S. Thomas and Michael Anthony Proffit.

A Petition For A Writ Of Certiorari to the Supreme Court of Virginia, application no. A-295, was filed on November 28, 1990, styled Wyatt Mining Equipment, Inc., petitioners, v. Robin S. Thomas, et al, respondents, with Wyatt Mining Equipment, Inc. By Edward R. Wyatt, Pres., and Edward R. Wyatt, as petitioners.

On December 3, 1990, Ms Suzy McDivitt, Assistant Clerk, returned said petition with a letter directing corrections, pursuant to Rules 14.1(K), 33, and 33.2(5). That the Orders and Opinions were misplaced. That the printing was incorrect. That the cover must be changed to reflect that this is a "Petition For Writ Of Certiorari to the

Circuit Court of Smyth County, Virginia" because that court decided the case on the merits, and that the petitioner could represent himself and his interest but, could not represent his corporation (Reply Appendix A p. 1a).

Petitioner didn't understand all the directions set forth in said letter and called Ms McDivitt, many times, for assistance. Petitioner was most concerned with the styling of the case, which he was advised was irrelevant. In addition, as the record and the appendix shows, that for some unscrupious reasons, the styling of the case is radical throughout the preceeding below, and the petitioner is yet confused as to what is appropriate. Upon directions, corrections and changes were made "format only" and the petition was returned to the Clerk of the United States Supreme Court and accepted.

If petitioner's petition had been refused, and another one filed, as argued by respondent, said petition would be untimely filed, therefore, would not have been accepted by the Clerk.

Whether or not petitioner appealed the Court's ruling of May 2, 1989, dismissing him as a plaintiff, and whether or not he was remained a party plaintiff in the trial is irrelavant because, Edward R. Wyatt, pro se, is the petitioner in this case which went to the Supreme Court of Virginia, and to this Court, styled Wyatt Mining Equipment, Inc. v. Robin S. Thomas, et al., as a party in interest. It is well established in the Rules of the Supreme Court of Virginia, the Supreme Court of the United States, and the Constitution of the United States, that any party has the "right" to represent himself/herself or his/her in

any Court of the United States.

Allstate Insurance Company, who was not a party in this case was included in the orders "after the trial". Counsel for Allstate, after representing them for over two (2) years, resigned when petition for writ of certiorari was filed. Allstate retained other counsel, who waived the right to file a Brief In Opposition. Neither counsel for Allstate were/are confused about who is the petitioner in this case. Their only statement, even though they waived their right to file a brief and had no right to make a statemant, was only that petitioner had no right to represent his corporation. (Reply Appendix F, G pp. 19a, 21a.

The appeal to the Virginia Supreme Court of Virginia is in conflict because, "ignoring all the other assignment of errors to said Court", if

misconduct was not practiced in said Court, then said appeal should have been granted on the grounds that the Circuit Court of Smyth County, Virginia, erred by refusing motions, re-motions, and request, and by refusing Edward R. Wyatt the "right" to represent his corporation or his interest at the M. T. S. A. on the grounds that Edward R. Wyatt "sole owner of Wyatt Mining Equipment, Inc." was not authorized to represent his corporation or his interest.

If the Supreme Court of Virginia ruled that Edward R. Wyatt is not allowed to represent his corporation, or his interest, and if mis-conduct was not practiced in said Court, then the appeal should have been refused and not reviewed. The Order entered on May 31, 1989, states that the appeal was refused on the grounds

that there was no reversible error. Opinion of the Supreme Court of Virginia, Notice of Appeal and assignment of errors, error number 10. (Petition, Appendix B, p. 2a) (Reply, Appendix E, J, pp. 17a, 28a).

Persuant to Rule 29.4(b) of the Rules of the United States Supreme Court, the constitutionality of the Fourteenth Amendment to the Constitution is drawn in question and 28 U.S.C. ss2403(a) may be applicable, therefore, a copy of the Petition For Writ Of Certiorari, Brief In Opposition, and Reply Brief is being served on the Solicitor General, Department of Justice, Washington, D.C. 20530. And no Court below has certified to the Attorney General the fact that the constitutionality of the Fourteenth Amendment was drawn into question.

CONCLUSION

The Petition For A Writ Of Certiorari should be granted for the foregoing reasons, for the reasons set forth in the petition, for the benefit of public interest, and in defense of our Constitution of the United States referred to as "reincarnations of prior state law claims, thinly veiled". And enforce Rule 8.1, and 8.2 of the Rules of the Supreme Court of the United States.

Respectfully Submitted,

Edward R. Wyatt
P.O. Box 1062
Marion, VA 24353
Pro se

Dated: February 20, 1991

APPENDIX A 12/3/90

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON,D.C. 20543

December 3, 1990

Mr. Edward R. Wyatt
P.O. Box 1062
Marion, Virginia 24354-1062

RE: WYATT MINING EQUIPMENT, INC.
V.
ROBIN S. THOMAS, ET AL.

Dear Mr. Wyatt:

Enclosed are 39 copies of your petition for writ of certiorari, which were received November 28, 1990. The petition must be corrected to comply with Rules 14 and 33 of the Rules of the Supreme Court.

The orders and opinions required by Rule 14.1(K) must be placed at the end of the petition, in an appendix.. I have enclosed sample copies of paid petitions for your reference.

Rule 33 governs the professional

printing and the typing and photocopying format for cases submitted on the paid docket. Forty copies of the petition and appendix, (whether or not it is under separate cover from the petition), must be sumitted on paper which is 6-1/8" by 9-1/4", and there must be at least 3/4" margin on all sides of the text. All material within the petition and appendix must be typed with pica type and double spacing, with the execption of footnotes and indented quotations, or professionally printed. Please note that photoreductions are expressly prohibited by that rule. This Court no longer accepts plastic bindings of any sort, pursuant to Rule 33.1(d). The petition must be secured in at least two places along the left margin, and it must be covered on front and back with white paper which is heaver than the pages. The application number must be

removed from the cover, because another number will be assigned to the petition, which will be stanped on each copy by this office.

The cover must be changed to reflect that this is a "petition for Writ of Certiorari to the Circuit Court of Smyth County, Virginia, because that court decided the case on the merits. See Rule 33.2(5).

Please note that although you may represent yourself individually, you cannot represent your corporation, because only a member of this Court's bar may represent another individual or entity. If you intend to have the corporation be included as a petitioner, you must hire a Supreme Court bar member to represent it. See Rules 7 and 33.2(7).

Please submit 40 corrected copies of the petition promptly, and a notarized

certificate of service, reflecting that three copies of the corrected petition were mailed to opposing counsel. See Rules 33.7 and 29.5. The brief in opposition will be due 30 days from the sumission of the corrected petition.

I have retained one copy of the petition, correspondence, and your check in the amount of $300.00

Very truly yours,

JOSEPH F. SPANIOL, JR., CLERK

By /s/ Suzy McDivitt

Suzy McDivitt
Assistant Clerk

cc: Greg Freaney
William W. Eskridge, Esq
Michael A. Proffit

APPENDIX B 10/22/90

SUPREME COURT OF THE UNITED STATES

No. A-295

Wyatt Mining Equipment, Inc.,

Petitioner

v.

Robin S. Thomas, et al.

O R D E R

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including November 28th, 1990.

/s/ "William H. Rehnquist

Chief Justice of the United States

Dated this 22nd

day of October, 1990.

APPENDIX C 10/11/90

WYATT MINING EQUIPMENT, INC.
EDWARD R. WYATT PRES.
PO BOX 1062
MARION, VIRGINIA 24354

Phone 703/783-2247
Fax 703/783-2247

October 11, 1990

JOSEPH F. SPANIOL, JR.
Supreme Court
U.S. Supreme Court Bldg.
Washington, D.C. 20543

Re: Petition for sixty day extention
to file Writ of Certiorari

Wyatt Mining Equipment, Inc.
v.
Robin S. Thomas and
Michael Anthony Proffit

Va. Supreme Court No. 900444

Circuit Court No. L-1840

Dear Mr. Spaniol:

Enclosed please find the original and two copies of a Petition for Sixty Day Extention to file Writ of Certiorari, and a copy of the opinion, which I request you file and forward to the Hornorable William H. Rehnquist, Chief Justice. Thank you

for your assistance.

With best regards, we remain

Very truly yours,

/s/ Wyatt Mining Equipment, Inc.

WYATT MINING EQUIPMENT, INC.

BY: /s/ Edward R. Wyatt

EDWARD R. WYATT PRES.

/s/ Edward R. Wyatt

EDWARD R. WYATT

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

WYATT MINING EQUIPMENT, INC. AND

EDWARD R. WYATT PETITIONERS

VS.

ROBIN S. THOMAS AND

MICHAEL ANTHONY PROFFIT RESPONDENTS

PETITION FOR: SIXTY DAY EXTENTION TO FILE

WRIT OF CERTIORARI

TO: WILLIAM H. REHNQUIST, CHIEF JUSTICE

PETITION FOR SIXTY DAY EXTENTION TO FILE

WRIT OF CERTIORARI

WYATT MINING EQUIPMENT, INC.
EDWARD R. WYATT PRES.
P.O. BOX 1062
MARION. VIRGINIA 24354-1062
PHONE: 703/783-2247

/s/ Wyatt Mining Equipment, Inc.

WYATT MINING EQUIPMENT, INC.

/s/ Edward R. Wyatt Pres.

By: EDWARD R. WYATT Pres.

/s/ Edward R. Wyatt

EDWARD R. WYATT

JURISDICTION

The opinion of the Supreme Court of Virginia was filed on July 31, 1990. The jurisdiction of this Court is invoked pursuant to the First, Fifth, and Fourteenth Amendment to the Constitution. Civil Rights 13, 13.8(1) Conspiracy, 18 U.S.C. ss 242, the orimal anolog of ss 1983. Civil Rights 13 42 U.S.C.A.ss 1983. Freedom of speech under 42 U.S.C. ssss 1983 & 1985, with jurisdiction in this court to hear such claims conferred by 28 U.S.C. ss 1343 (1-4). 28 USCS ss1651. 28 U.S.C. ss1257.

REASONS FOR GRANTING THE PETITION

1. That petitioners, Wyatt Mining Equipment, Inc., and Edward R. Wyatt sole owner, president, registered agent, secretary and treasurer of Wyatt Mining Equipment, Inc., which is no longer active, is not financially able, at this time, to pay the docket fee, and does not wish to proceed In Forma Pauperis.

2. That Edward R. Wyatt, who is not an attorney, but due to financial conditions, was required to proceed in Circuit Court, after terminating attorneys for misconduct, in The Virginia Supreme Court and now in preparing the said writ, which requires extended time to do so.

3. That Edward R. Wyatt, who is under mental and physical therapy with the Mountain Home Veterans Hospital, Johnson City, Tennessee, due to the strain that this cause has put him under, which

requires extended time for both physical and mental reasons, that medication is impairing his memory, causing him to have to rely on records, which he is having legal problems in his attempt to accumulate.

4. That Wyatt Mining Equipment, Inc. and Edward R. Wyatt alleges there is probable cause that the Petition for Appeal to The Supreme Court of Virginia was tampered with and may require further pursuit in said Court or another Court.

5. That this matter, and other matters in regards to this, are being viewed by the panel of the American Civil Liberty Union, which requires extended time for said viewing, considerations, and decisions.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

NO._____

WYATT MINING EQUIPMENT, INC. AND
EDWARD R. WYATT PETITIONERS

V.

ROBIN S. THOMAS AND
MICHAEL ANTHONY PROFFIT RESPONDENTS

PROOF OF SERVICE

I, Edward R. Wyatt, do swear and declare that on this date, October 11, 1990, pursuant to Supreme Court Rules 29.3. and 29.4, I have served the attached PETITION FOR SIXTY DAY EXTENTION TO FILE WRIT OF CERTIOUARI on each party to the above proceeding, or that party's counsel, and on every other person required to be

served by depositing an envelope containing the above document in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

William W. Eskridge, counsel for respondent Robin S. Thomas, P. O. Box 2288, Abingdon, Virginia 24210, telephone no. (703) 628-5151.

Michael Anthony Proffit, without counsel, P. O. Box 503, Chilhowie, Virginia 24319, telephone (703)-646-5694.

Howard C. McElroy, counsel for Allstate Insurance Company, P.O. Box 429, Abingdon, Virginia 24210, telephone (703) 628-9515.

/s/ Wyatt Mining Equipment, Inc.

WYATT MINING EQUIPMENT, INC.

/s/ Edward R. Wyatt

By: _____

EDWARD R. WYATT Pres.

/s/ Edward R. Wyatt

EDWARD R. WYATT

Subscribed and Sworn to Before Me

this 11th day of October, 1990.

/s/ Lois Russell

Notary Public in and for said

County and State

APPENDIX D 09/7/90

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 7th day of September, 1990.

Wyatt Mining Equipment, Inc., Appellant

against Record No. 900444

Circuit Court No. L-1840

Robin S. Thomas, et al.,

ORDER DEFERRING ISSUANCE OF MANDATE

Upon consideration of the motion of the appellant, by Edward R. Wyatt, its President, it is ordered that issuance of the mandate entered herein July 31, 1990 be and the same hereby is deferred, to and including the 29th day of October, 1990, on the expiration of which time the same may be issued, unless the case has been before that time docked in the Supreme Court of the United States, in which event

issuance thereof shall be deferred until the final determination of the case by that Court.

A Copy,

Teste:

/s/ David B. Beach
Clerk

APPENDIX E 02/13/90

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF SMYTH

WYATT MINING EQUIPMENT INC.,	)
	)
Plaintiff	)
	)
v.	)
	)
ROBIN S. THOMAS AND	)
	)
MICHAEL ANTHONY PROFFIT	)
	)
Defendants	)

NOTICE OF APPEAL

The plaintiff, Wyatt Mining Equipment Inc., solely owned by Edward R. Wyatt, but no longer in operation and is without legal counsel at this time hereby, in order to preserve the appeal right of the corporation, gives notice of appeal from the decree of this Court entered on January 16, 1990, and further gives notice that the trial transcript covering the testimony, which the plaintiff objected to

as it being a conspiracy to fraud and perjured, and other incidents of trial have been filed and other incidents of trial are yet to be filed, all in compliance with Rule 5:6 of the Rules of the Supreme Court of Virginia.

The plaintiff further wishes to file the enclosed certified copy of the 1989 annual report of Wyatt Mining Equipment Inc., verifying that Edward R. Wyatt is sole owner of said corporation.

/s/ Wyatt Mining Equipment Inc.

WYATT MINING EQUIPMENT INC.

/s/ Edward R. Wyatt Pres.

By: _____

EDWARD R. WYATT Pres.

APPENDIX F 02/7/91

William K. Suter, Clerk
Supreme Court of United States
One First Street, NE
Washington, D.C. 20543

Re: Wyatt Mining Equipment, Inc.
v.
Robin S. Thomas, et al.

No. 90-1133

Dear Mr. Suter:

We represent Allstate Insurance Company, one of the respondents in the above-referenced case pendong on the petitioner's application for a writ of certiorari. Allstate Insurance Company hereby waives its right to file a brief in opposition to the petition under Rule 15 of the Supreme Court Rules.

To date, Edward R. Wyatt has appeared pro se in this proceeding and has filed his pleading under the style Edward R. Wyatt, Petitioner, v. Robin S. Thomas, et al., Respondents. The case in the Virginia Supreme Court from which Mr. Wyatt seeks a

writ of certiorari was, however, a lawsuit in which his corporation, Wyatt Mining Equipment, Inc., was the plaintiff. Mr. Wyatt thus appears to be noncomplaint with the well-established rule that a party may appear pro se only individually and not in a representative capacity for a corporation.

We are by copy of this letter advising the other parties or their attorneys of Allstate Insurance Company's waiver of its right to file a brief in opposition to the petition.

Thank you for your assistance.

Very truly yours,

GENTRY LOCKE RAKES & MOORE

/s/ Charles L Williams, Jr.

Charles L. Williams, Jr.

APPENDIX G 11/29/90

Mr. Joseph F. Spaniol,Jr
Clerk of the Court
Supreme Court of the United States
Washington,D.C.20543

Re: Wyatt Mining Equipment, Inc.
v.
Robin S. Thomas and
Michael Anthony Proffit

U.S. Supreme Court (Application No. A-295)

Our File No. 1487-LT-033

Gentlemen:

Allstate Insurance Company was served with process in this case as the plaintiff's uninsured motorist carrier. My firm and I were counsel of record for Allstate during the proceedings in the Circuit Court of Smyth County, Virginia, and in the Supreme Court of Virginia.

Today, I received a copy of a Petition for Writ of Certiorari filed on behalf of the plaintiff in the Supreme Court of the United States.

Please be advised that my firm

and I have not been, and will not be, retained to represent Allstate in any of the proceedings in this case in the Supreme Court of the United States. Please direct all correspondence and other papers regarding such proceedings to the following Allstate employee: Mr. Greg Freaney, Allstate Insurance Company, P.O. Box 20869, Roanoke, Virginia 24018. By a copy of this letter, Iam sending to Mr. Freaney the copy of the Petition for Writ of Certiorari that I received today.

Thank you.

Sincerely,

/s/ Howard C. McElroy

Howard C. McElroy

c: Mr. Greg Freaney (with copy of Petition)

APPENDIX H Filed: 4/7/89
Heard: 5/2/89

VIRGINIA:

IN THE CIRCUIT COURT OF SMYTH COUNTY

EDWARD R. WYATT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Law No. ____
	)	
ROBIN S. THOMAS and MICHAEL ANTHONY PROFFIT,	)	
	)	
Defendants.	)	

NOTICE

TO: James N. L. Humphries, Esq.
Penn, Stuart, Eskridge & Jones
Post Office Box 2288
Abingdon, Virginia 24210

Howard C. McElroy, Esq.
White, Elliot & Bundy
Post Office Box 429
Abingdon, Virginia 24210

PLEASE TAKE NOTICE that the undersigned will request that on May 2, 1989 at 10:00 o'clock a.m., or soon thereafter as counsel may be heard, in the Circuit Court of Smyth County, Marion, Virginia, that the Honorable C.

B. Flannagan, II, Judge, rule upon Motions filed on behalf of plaintiff as follows:

Motion to Add Party Plaintiff

Motion for Leave to Amend Motion for Judgment

Motion for Default Judgment

You are invited to attend and protect your interests therein.

EDWARD R. WYATT
By Counsel

BOUCHER, MITCHELL AND HUTTON
188 East Main Street
Abingdon, Virginia 24210

By: /s/ David J. Hutton

APPENDIX I Filed: 4/7/89
Heard: 5/2/89

VIRGINIA:

IN THE CIRCUIT COURT OF SMYTH COUNTY

EDWARD R. WYATT,)
)
Plaintiff,)
)
v.) Law No. _____
)
ROBIN S. THOMAS and)
MICHAEL ANTHONY PROFFIT,)
)
Defendants.)

MOTION FOR LEAVE TO AMEND
MOTION FOR JUDGMENT

Comes now the plaintiff, Edward R. Wyatt, by counsel, and respectfully moves the Court pursuant to Rule 1:8 of the Rules of the Supreme Court of Virginia for leave to amend the Motion for Judgment previously filed herein as set forth in the Amended Motion for Judgment attached hereto, and in support thereof states as follows:

1. By Motion filed

contemporaneously herewith, plaintiff has requested the Court add as a party plaintiff in this proceeding Wyatt Mining Equipment, Inc.

2. The addition of Wyatt Mining Equipment, Inc. as a plaintiff in this proceeding will require an Amended Motion for Judgment.

3. Plaintiff desires to add as an additional count to the Motion for Judgment previously filed herein a cause of action alleging negligent entrustment by the defendant Robin S. Thomas.

4. The granting of this Motion by the Court will promote the ends of justice, allowing the plaintiffs to allege all potential causes of action arising out of the accident and damage to plaintiff's automobile which occured on October 31, 1987 as set forth in the Motion for Judgment.

WHEREFORE, the plaintiff, by counsel, respectfully moves the Court for leave to amend the Motion for Judgment previously filed herein as set forth in the attached Amended Motion for Judgment.

EDWARD R. WYATT
By Counsel

BOUCHER, MITCHELL AND HUTTON
188 East Main Street
Abingdon, Virginia 24210

By: /s/ David J. Hutton

APPENDIX J 4/10/90

WYATT MINING EQUIPMENT INC.,

VS.

ROBIN S. THOMAS AND
MICHAEL ANTHONY PROFFIT.

PETITION FOR APPEAL

ASSIGNMENTS OF ERROR

1. In failing to grant the plaintiff's Default Judgment against defendant Proffit when he failed to file responsive pleading to Motion For Judgment.

2. In granting the defendants Motion For Summary Judgment, over plaintiff's objection, when the matter was in dispute.

3. In granting the defent Thomas' Motion To Strike without viewing the evidence most favorable to the party against whom the motion was made.

4. In granting the defendant Thomas' Motion To Strike withour viewing the

evidence most favorable to the party against whom the motion was made.

5. In granting the defendant Proffit's Instruction's Number A, B, and C over plaintiff's objectiopn's.

6. The plaintiff has discovered evidence since the trial that the defendants and their witness testified falsely as to material matters in an effort to further their defense.

7. In collaborating with defendant Proffit and counsel for Allstate, plaintiff's carrier, and advising said defendant.

8. In overruling plaintiff's objections to matters that were introduced by defendants that were irrelevant, know to be false and for the sole purpose of degrading the plaintiff.

9. In failing to allow plaintiff to introduce plaintiff's Exhibit Number Four.

10. In failing to allow plaintiff to

discharge counsel and represent himself or, in the alternative, retain other counsel.

11. In allowing Joinder of Nondiverse Defendant then to Diversity in the last alternative.